STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

CENTRAL ILLINOIS LIGHT COMPANY d/b/a AmerenCILCO, CENTRAL ILLINOIS PUBLIC SERVICE COMPANY d/b/a AmerenCIPS, ILLINOIS POWER COMPANY d/b/a AmerenIP, Consideration of the federal standard on interconnection in Section 1254 of the Energy Policy Act of 2005.	)	Docket No. 06-0525

BRIEF ON EXCEPTIONS OF THE AMEREN ILLINOIS UTILITIES

May 30, 2008

The Central Illinois Light Company, Central Illinois Public Service Company, and Illinois Power Company (collectively, Ameren Illinois Utilities) offer their brief on exceptions to the Proposed Order (Proposed Order) issued by the Administrative Law Judge (ALJ) on May 23, 2008 with regard to the promulgation of Part 466 of the Commission's Regulations (Proposed Rule). Pursuant to 83 Ill. Admin. Code 200.830(b)(2), the Ameren Illinois Utilities' exceptions to the Proposed Order are provided in the attached appendix.

I. INTRODUCTION

The Ameren Illinois Utilities generally support the Proposed Order and Rule, and recognize the Commission's authority to promulgate rules related to the customers interconnecting generation to the utilities' distribution systems. The Ameren Illinois Utilities want to make clear that the legal arguments offered in its initial and reply comments *were not* intended to advance any argument that the Commission is acting ultra vires of its enabling legislation by promulgating the rule attached the Proposed Order. Rather, the legal posture of the proceeding was articulated for the purpose of establishing the framework for the consideration of the various positions of the issues offered by the Ameren Illinois Utilities because we believe that there existed several misperceptions by the parties about the relevant state and federal statutes. Primarily, we want to make clear that we do not believe the net-metering and Energy Policy Act legislation mandates the adoption of this expansive and operationally prescriptive rule, nor do we believe it warrants short-shift consideration of the important policy issues presented due to a perceived need to rush its promulgation.

As we noted in our initial comments, the Ameren Illinois Utilities in the past have opposed a rulemaking in the past, but have reoriented our position for two reasons: First, we recognize the growing trend in interconnection of generation to distribution circuits and see a

need for standardization and clarity; second, while we have our reservations about the necessity of a formal rule to accomplish these ends, we recognize the high value the other parties to this proceeding place on a rulemaking. Therefore, we generally support this rulemaking with the exception of a few provisions as articulated below.

Additionally, we extend our gratitude to the Commission Staff for their efforts in this docket. We recognize the challenge this rulemaking posed to the Commission Staff and appreciate their hard work.

I. EXCEPTIONS

A. Standardized Interconnection Contracts

The Ameren Illinois Utilities recognize the position of some parties that establishing contracts that are difficult to change is perceived as expedient due to the budgetary and time limitations of such groups. However, the Ameren Illinois Utilities believe that, given the evolving nature of the renewable generation industry, locking in contracts by rulemaking gives rise to an inflexibility that advantages neither utilities nor their interconnecting customers in the long run. Moreover, it places the regulatory agency in a position where it is engaging in a traditional business function: the creation of contractual relationships enforceable in a court rather than before the regulatory agency. When a regulatory agency actually drafts a contract, that agency in essence assumes some entrepreneurial control over the regulated business' operations – an assumption traditionally avoided by both utilities and this Commission.

For that reason, the Ameren Illinois Utilities offered a compromise by establishing a regulatory filing regime for the approval of standardized *pro forma* agreements, but outside of a rulemaking proceeding. (AIU Comments, pp. 14-15; AIU Reply Comments, pp. 2-5.) The process would allow the utility to be the primary drafter of the agreement, but provide the

Commission with a structured forum to overrule provisions of the contracts in a docketed proceeding.

In the Proposed Order the ALJ identified a legal ambiguity in the word "deficient" and noted that such ambiguity gave the Commission no standard by which to evaluate the proposed agreements filed by the utilities. Proposed Order, 45-46. The intentions was to allow the Commission to reject the contract if the contracts offered fail to strike an appropriate balance between the rights of the future parties to the pro forma agreements as well as ratepayers generally. However, in light of the ALJ's opinion and to simplify matters, we now request that the Commission simply order the utilities to file *pro forma* level 1 through 4 contracts as a tariff filing in a separate proceeding. The Commission can consolidate the tariff filings and maintain its desired level of uniformity. This will also allow the utilities to conform their agreements to the particulars of their contracting practices, and preserve the ability of the utilities and interconnecting customers to prospectively adjust the standardized contracts without the hassle and delay associated with a formal rulemaking process. Please see Appendix A for the strike-through and replacement language.

B. Bilateral Indemnification for Small Generator Interconnections

The Ameren Illinois Utilities do not believe mutual indemnification provisions are appropriately placed in the pro forma contracts mandated by the rule. (AIU Comments, pp. 15-17; AIU Reply Comments, pp. 8-11.) The Proposed Order indicated its basis for supporting mutual indemnification as follows:

> In most circumstances, a third-party, who is not a party to an interconnection agreement, but who is looking for a "deep pocket" to sue, would be totally unaware of the indemnification provision in the interconnection contracts, and would, therefore, be totally

> unaware that there is any "deep pocket." Ameren's argument is not grounded in fact. Proposed Order, 51-52.

While we acknowledge the logic in this paragraph, it does not square with our experience as a large business operation that finds itself often the target of lawsuits. The reality is that if someone is injured due to a generator interconnected with a customer's premises and our system, any competent plaintiff's attorney will sue all three parties: The homeowner, the generation equipment manufacturer, and the utility. An interconnection agreement in such a lawsuit is unquestionably discoverable. The mutual indemnification provision now creates an additional avenue of liability for use against the utility, and an excuse to keep an "innocent" utility active in lengthy and costly legal proceedings. As we stated in our comments, this issue is clearly a ratepayer equity issue, and it is against public policy to place utilities and their ratepayers in a position that heightens their susceptibility to litigation costs by creating a contractual source of recovery.

For all of the reasons stated in our comments (*see id.*), we believe the analysis and conclusion paragraph of the proposed order should be revised to provide as articulated in Appendix A.

C. Queuing

The Ameren Illinois Utilities believe that there has been considerable confusion regarding the sequential functioning of an interconnection "queue." We have fully laid out our position regarding the importance of queuing procedures in our comments (AIU Comments, pp. 7-10.) We reiterate our position and support of queuing by reference here, but offer a few additional comments to clarify.

The Proposed Rule is based on a model rule referred to as the "MADRI model." (*See* Initial Comments of IREC, 1.) Implicit in the very structure of the rule is the concept of an ordered interconnection "queue" for "level 4" and three lesser levels of "expedited reviews." Expedited reviews are reviews that do not become subject to the queuing methodology of processing interconnection facilities. To gain access to an "expedited review" the customer must meet certain screens. The default review is found in level 4. A queue is by definition a sequentially processed list, and the queue position is the position held by the interconnecting generator that allows their application to be processed ahead of later requested interconnection. Therefore, it appears that the order takes the queuing specific language out of the very procedures intended to provide for a queue creating unnecessary ambiguity in the law.

It is an engineering inevitability that all improvements to a distribution circuit should be planned sequentially. We note that ELPC has essentially argued against a sequential process altogether. (ELPC Reply Comments, 9-10) This approach essentially throws the "baby out with the bathwater." To prevent queuing backlogs, the solution is not to do away with essential system planning methods, but to make a queue that runs efficiently. A queue position should never become what resembles a property right that can never be lost. A proper queue must have milestones applicable not to just utilities, but also customers, which the Proposed Order provides for and the Ameren Illinois Utilities support. We do not support the wholesale abandonment of sequential planning, however. The only time projects should be forced together for study is if the customers initiating such projects consent to such an arrangement.

For the record, the Ameren Illinois Utilities are only asking that language be added to the rule that specifically recognize that utilities can process the queue sequential on a circuit-by-circuit basis. In our initial comments we provided an explanation of what a queue is and how it

must have milestones applicable to both the utility and the interconnection customer in order to provide fairness to all customers seeking to interconnect customer owned generation. (AIU Comments, pp. 7-10.) We did not offer those arguments to support a system-wide queuing modification to the Proposed Rule, rather we intended to support a queuing by circuit regime together with mutually applicable milestones.

Therefore, the Ameren Illinois Utilities support queuing by circuit. We point to the comments of IREC, a party with experience in other similar provisions in other states acknowledges the importance of queuing by circuit. In its Reply Comments, IREC stated:

> In the event that there are multiple applications on the same distribution circuit, they should be studied together or sequentially, but no such requirement exists beyond the individual distribution circuit. If the proposed facilities are not on the same distribution circuit, there is no need for sequential review. (IREC Reply Comments, p. 3.)

IREC additionally indicated its support for Ameren's queue by circuit language at the Public Hearing held concerning this docket on May 20, 2008. We believe that the Proposed Order should be changed to add clarity to the rule in this regard as shown in Appendix A.

II. CONCLUSION

Wherefore, the Ameren Illinois Utilities pray the Commission provide the relief described above and in Appendix A and grant any other relief it deems just and equitable.

Dated: May 30, 2008

Respectfully submitted,

CENTRAL ILLINOIS LIGHT COMPANY
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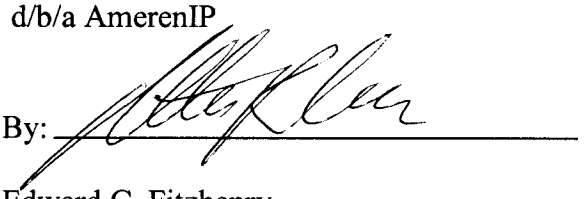
CENTRAL ILLINOIS PUBLIC SERVICE
COMPANY d/b/a AmerenCIPS, and
ILLINOIS POWER COMPANY
d/b/a AmerenIP

By: 

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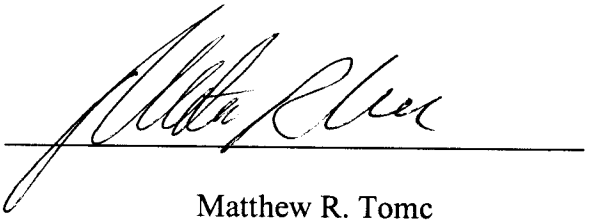
CERTIFICATE OF SERVICE

I, Matthew R. Tomc, hereby certify that a copy of the foregoing Brief on Exceptions was served electronically via Illinois Commerce Commission E-Docket, and to all parties of record, on this 30th day of May, 2008.



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